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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

NO. 588

Alabama State Federation of Labor, Local Union No. 103 United Brotherhood of Carpenters and Joiners of America, American Federation of Labor, United Brotherhood of Carpenters and Joiners of America and B. E. Jones,

Petitioners,

—vs—

Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, and William N. McQueen, as Acting Attorney General of the State of Alabama,

Respondents.

BRIEF FOR RESPONDENTS

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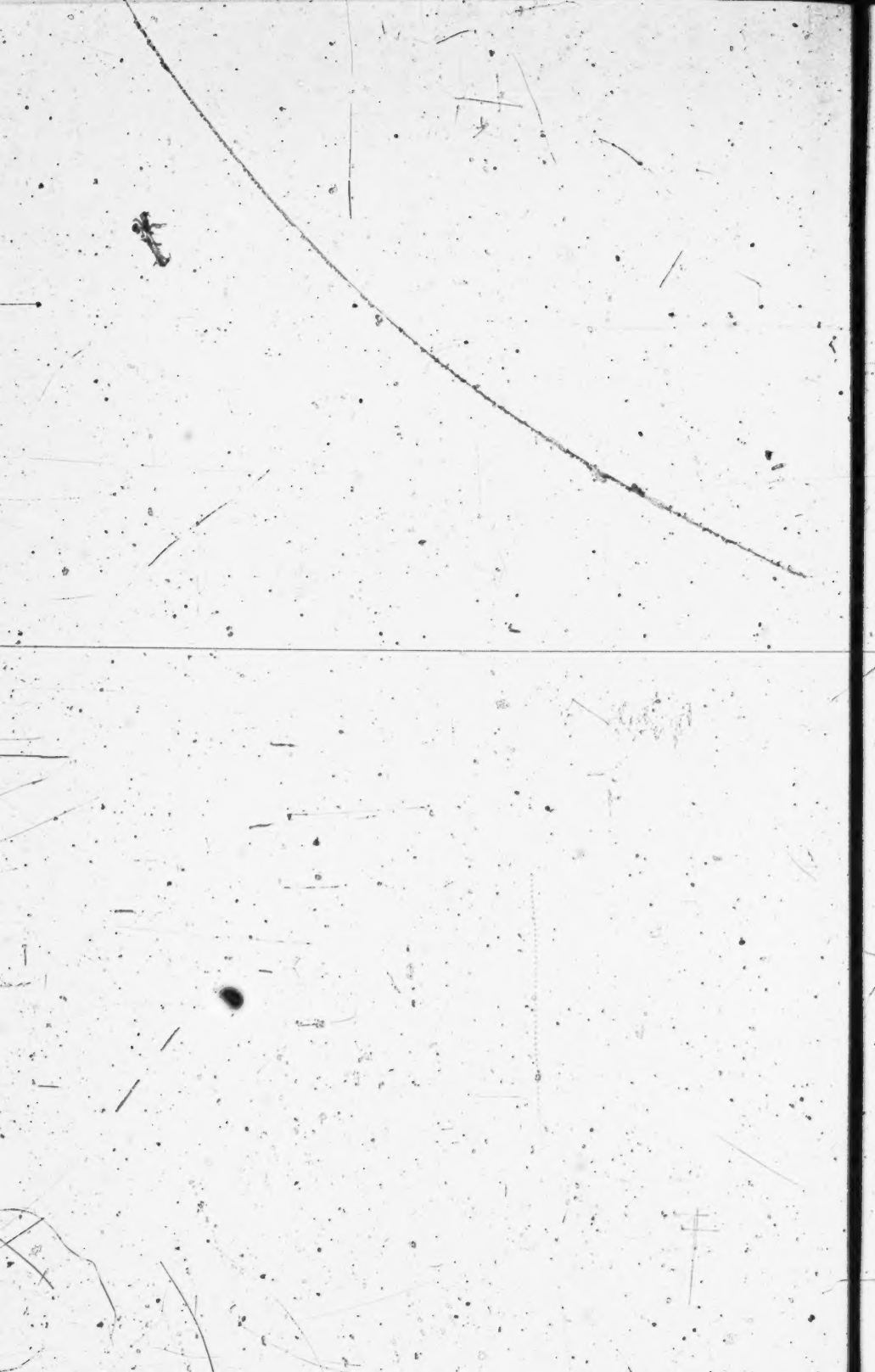

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IN THE

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Respondents.

BRIEF FOR RESPONDENTS

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Advance Sheets. A copy of such opinion is appended as Exhibit "B"

to the Petition for Writ of Certiorari filed herein and appears in the Record herein at Page 321.

STATEMENT AS TO JURISDICTION

Petitioners assert jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

Respondents, however, contend that no case or controversy within the meaning of Article III, Section 2 of the Constitution of the United States is presented in this proceeding and that, therefore, this Court is without power or jurisdiction to adjudicate the questions of alleged conflict of the State statute, known as the Bradford Act, with the provisions of the Constitution of the United States. (This jurisdictional question is hereinafter discussed in Subdivision I of the Argument.)

STATEMENT OF THE CASE

This action was instituted in the Circuit Court for the Tenth Judicial Circuit of Alabama (Jefferson County, Alabama) by a petition for a declaratory judgment filed pursuant to the Alabama Declaratory Judgment statute (Title 7, Sections 156-168, Code of Alabama 1940), in which the petitioners, Alabama State Federation of Labor; Local Union No. 103, United Brotherhood of Carpenters and Joiners of America; American Federation of

Labor; United Brotherhood of Carpenters and Joiners of America; and B. E. Jones, claiming their rights, status, or other legal relations to be affected by an act of the Legislature of Alabama referred to as the Bradford Act (General Acts of Alabama of 1943, Page 253), sought to have said Act, or certain sections or provisions thereof, declared invalid as being in conflict with the Constitution of the State of Alabama and certain provisions of the Constitution of the United States.

The respondents are Robert E. McAdory, Solicitor of Jefferson County, Alabama; Holt McDowell, Sheriff of Jefferson County, Alabama, and William N. McQueen, Acting Attorney General of the State of Alabama.

The court below held the Act as a whole was not adopted contrary to any provision of the Constitution of Alabama. The court below did not specifically pass upon all of the sections of said Act. It held that Sections 7, 15, and 16 were valid; and held invalid "Section 12 and so much of Section 13, as prevents a strike except by a vote of a majority of the employees in a business, plant, or in unit of such plant expressed in a secret written ballot", * * * * * "together with the provisions of Section 14 intended to make more effective that part of Section 13 as to unlawful strikes; and all of Section 17". It further held that the sections or portions of sections declared to be invalid did not affect the validity of the remaining provisions of the Act.

The only sections of the Act specifically involved in this appeal are Sections 7, 15, and 16, the remaining provisions either having been held unconstitutional by the court below, or their validity not having been challenged in this proceeding.

The Bradford Act is a comprehensive State Labor Act under which is created a Department of Labor, and which provides for a Board of Mediation to assist in the settlement of labor disputes. The policy of the Act is declared in Section 1.

Section 7 contains provisions (a) under which labor organizations, as defined in the Act, then functioning in Alabama, shall within sixty days after the effective date of the Act, file with the Department a copy of the constitution and by-laws of the organization and a copy of the constitution and by-laws of the national or international union, if any, to which it belongs; (b) requiring every labor organization, as defined in the Act, thereafter desiring to function in Alabama likewise to file copies of such constitution and by-laws with the Department of Labor; and (c) requiring the filing within thirty days of copies of changes or amendments to such constitution or by-laws.

Section 7 further requires every labor organization functioning in the State and having twenty-five or more members in any calendar year to file with the Department of Labor annually, on or before February 1st, a report in writing with respect to the

operation of the labor organization during the next preceding calendar year, setting forth certain information, including financial data, as specifically provided in the Act, and upon the filing of such report to pay the Director of Labor a fee therefor of Two Dollars. The information contained in such report is also required annually to be filed with the members of the labor organization. The Director construed this provision was complied with by posting a copy of the report on the bulletin board or in some conspicuous place in the union office or meeting place, with notice to the membership that the report is available for inspection by the members (R. 266).

A violation of these provisions by a labor organization subjects the organization to a penalty, enforceable under Section 18 of the Act.

Section 7 also contains a provision making it unlawful for any officer or agent of a labor organization to collect dues, fees, assessments, fines, or other monies from its members, while the organization is in default with respect to the filing of the annual report. A violation of this provision is made a misdemeanor under Section 18 of the Act.

Section 15 makes it unlawful for any labor organization or any other person to collect, receive, or demand any fee, assessment, or sum of money, other than initiation fees or dues, for what is termed "a work permit" or "as a condition for the privilege to work".

Section 16 prohibits executive, administrative, professional, or supervisory employees from being accepted as members of a labor organization admitting to membership therein employees other than persons employed in an executive, administrative, professional, or supervisory capacity, or in a labor organization affiliated with a labor organization permitting membership to employees other than persons employed in an executive, administrative, professional, or supervisory capacity. The Section contains a proviso to the effect that it shall not be construed so as to interfere with or void any existing insurance contract.

The cause was submitted for the rendition of a declaratory judgment upon the pleadings and proof substantially as stated in petitioners' Statement of the Case, except respondents deny the correctness of the statement therein that the evidence submitted or facts of which the court takes judicial knowledge established a "lack of rational basis for the particular sections", 7, 15, and 16, or that such evidence sustained the charge that "such sections were discriminatory".

It was shown that, up to February 16, 1944, one hundred ninety two labor organizations functioning in Alabama had filed the annual financial reports as required in Section 7 of the Act indicating compliance with the previous requirements for the filing of copies of the constitution and by-laws of the organization, without protest or objection that

the filing of such financial reports entailed any unreasonable amount of work or involved any difficulty or impossibility in the compliance therewith (R. 268).

The petition alleged the duty of the respondents McAdory and McDowell, as Solicitor and Sheriff, to enforce the criminal provisions of the Act, and the fact that they were prepared to and would do so unless the Act were declared unconstitutional; and contained allegations with respect to the expenditures of public money which would be required in such enforcement (R. 19), the allegation of which facts was admitted (R. 227).

The petition further alleged the public interest involved in a determination of the constitutionality of the Act and the desirability for a judicial construction thereof (R. 19, 20), which allegations were admitted (R. 227).

It was not shown, however, that any specific prosecution had been instituted or threatened against the petitioners.

In Section 17 of the petition, the manner in which the petitioner United Brotherhood of Carpenters and Joiners of America provided for the issuance of a "working permit" was alleged (R. 20, 21), and such facts were admitted (R. 227). The terms and provisions with reference to the issuance of "work permits", or "working permits", by such

organization is fully set forth in Section 46 of its by-laws (R. 70, 71 and 72). Provisions with reference to the issuance of "work permits", or "working permits", by Local Union 103, United Brotherhood of Carpenters and Joiners of America, are shown in the Working Rules of this organization in Section III, (R. 200, 201 and 202) Section V "A" (R. 203) and in Section VII "D" (R. 205)

Evidence was introduced on behalf of the respondents to the effect that:

(a) Nine international and national unions are composed solely of foremen and supervisory employees;

(b) Twenty-nine international and national unions permit membership of foreman in the same union with production workers;

(c) Thirty-seven international and national unions exclude foremen and general supervisors, although working foremen and minor supervisors are admitted to membership in some instances;

(d) Of the remaining one hundred and twenty international and national unions, it was reported by the United States Department of Labor: "Most of these exclude foremen from membership, although some of their locals may include foreman in the absence of a constitutional provision debarring them" (R., 277, 278); and that a number of local unions

are composed solely of supervisory employees (R. 279). See United States Department of Labor Memorandum No. 7, introduced in evidence (R. 268-289).

The petitioner B. E. Jones testified with reference to the admission of superintendents and foremen as members of Local 103 (R. 298-309). In this testimony, the witness stated:

> "As superintendent of a plant, I am subject to discipline by the union of which I am a member should I violate any of the union rules." And again:
>
> "I would say that in some of these plants some of the men in a supervisory capacity would feel, at times torn between loyalty to their employers and loyalty to their employees. This would probably happen when the man acting in a supervisory capacity was not in sympathy with the union."

SUMMARY OF ARGUMENT

I

Since the State, in the exercise of its police power, may adopt reasonable regulations applicable to labor organizations, the provisions of Sections 7, 15, and 16 of the Bradford Act may not be condemned as unconstitutional under the rules of this Court, except in a case involving the application of the statutory provision, where all of the attending facts and circumstances have been presented and the federal questions have been determined by the court below. Although the Supreme Court of Alabama, pursuant to the Alabama declaratory judgment statute, may have been authorized to consider and render a declaratory judgment upon Sections 7, 15, and 16 of the Bradford Act, decision by this Court of the constitutional questions relating to these sections and the possible application thereof to various situations and circumstances, under the established rule of this Court, do not present a case or controversy within the judicial power of this Court under Article III, Section 2 of the Constitution of the United States. A decision by this Court upon such questions would, in its nature, be an advisory opinion largely based upon hypothetical facts; and the decision of this Court thereon, not now being necessary and unavoidable, should await the specific application of the statutory provisions when the party affected may plead or assert any constitutional privilege or immunity which he claims to be invaded by

the statute or the application thereof. This is the result of the difference in the power and jurisdiction of the State Supreme Court and of this Court in the determination of constitutional questions.

II

Section 7 of the Bradford Act, requiring labor organizations to file a copy of its constitution and by-laws and amendments thereto, and subsequently to file annual financial reports, constitutes a reasonable regulation of labor organizations, enacted by the State in the exercise of its police power. These documents are for the purpose of furnishing information to the Department of Labor, and in no sense are they intended, nor may they fairly be construed, as imposing a license, or as interfering with or infringing upon the rights of freedom of speech or assembly of any individual. There is no discretion involved on the part of any official. There is no license, in fact or effect. The fee of two dollars, for the filing of the annual financial report relating to the conduct of the organization in the preceding calendar year, has been construed by the court below as a nominal filing fee and not a tax. A violation of these provisions is enforceable only against the labor organization itself or its officers or agents. Since the regulation is reasonable, it necessarily follows that it is within the power of the State to provide an appropriate method of enforcement. The civil rights of freedom of speech and assembly are not guaranteed to labor organizations or associations as

such. Since the Act contemplates the free exercise of speech and assembly by the individual members, in order to adopt a constitution and by-laws and to complete the organization before such documents are required to be filed or the organization thereafter commences to function as an organization, there is no interference with individual rights of speech or assembly. No such instance was presented to or envisioned by the trial court or the Supreme Court of Alabama.

III

Section 15 of the Bradford Act, prohibiting labor organizations from charging for what is termed a "work permit", without interfering with the right of the labor organization to collect any amount of initiation fees or dues, was adopted by the Legislature to protect the fundamental right to work. No specific instance involving the issuance of a work permit in violation of this provision is presented in this case. The burden was on the petitioners to prove its unreasonableness, yet none of the witnesses discussed this practice. Various provisions in the by-laws of the labor organizations, petitioners in this case, were introduced in evidence with respect to the issuance of "work permits" or "working permits" but the facts and circumstances attending their issuance, or abuses, or lack of abuses involved in the practice were not shown. The Court will therefore presume that the Legislature knew of facts sufficient to justify the adoption of this regulation, the contrary not appearing. The

wisdom of legislation as a matter of policy is a question with which the Court is not concerned, but addresses itself to the legislative branch of the government.

IV

Section 16 of the Bradford Act, in prohibiting labor organizations from accepting as members thereof persons employed in an executive, administrative, professional or supervisory capacity, where the constitution and by-laws of the organization permit membership to other employees, has the effect of requiring separate labor organizations for these two classes of employees. The executive, administrative, professional and supervisory employees are more closely related to management. The supervisory employee is the representative with whom other employees must negotiate to obtain a collective bargaining agreement. In other words, employees which constitute management, or which are so closely related to management, and who must sit across the table in negotiating a collective bargaining agreement with employees generally, logically fall into a different class, and were so treated by the Legislature. Their interests and sympathies are different. Many labor organizations have long recognized the fact by voluntarily excluding such supervisory employees. Supervisory employees are differently treated in the Fair Labor Standards Act and in the administration of the National Labor Relations Act. Such employees, by reason of their re-

lation to management, are denied the right to vote in the choice of a bargaining agent in the administration of the National Labor Relations Act. The wisdom of such a regulation addresses itself to the legislative branch of the government. It is based upon the fundamental principle that one may not serve two masters, and is therefore not arbitrary.

V

Neither Section 7 nor Section 16 conflicts with the National Labor Relations Act. The principal provisions of the National Labor Relations Act are recognized and the provisions of the State Act concur therein; and such provisions are, by the Bradford, Act, extended in their operation into a field not covered by the Federal Act. The record shows no instance of conflict with any application of the National Labor Relations Act. This Court has held that the field was not preempted by the Federal Act, and has upheld the validity of State labor laws and orders adopted pursuant thereto not shown to be in actual conflict with the National Labor Relations Act.

VI

The exception of labor organizations the members of which are subject to the Railway Labor Act does not result in a discriminatory classification forbidden by the Fourteenth Amendment to the Constitution of the United States. The resulting classifica-

tion is not arbitrary but was probably adopted in consequence of the different treatment by Congress of employees engaged in interstate transportation, and the labor organizations chosen by them. In this field Congress has apparently preempted State legislation, while it has not done so as to employees or labor organizations amenable to the National Labor Relations Act. The Legislature was well within the exercise of its discretion in the adoption of this classification or exemption. It is therefore not arbitrary.

VII

Section 15 of the Bradford Act is not so uncertain or ambiguous in its terms as to constitute a denial of due process of law. The term "work permit" appears in the by-laws of labor organizations and is therefore well understood in labor circles, and has a definite meaning. Its issuance or use is not prohibited. That which is forbidden is the making of a charge therefor in addition to any initiation fee or dues of the labor organization.

Surely no labor organization in good faith could claim that it was not informed of the nature and cause of the accusation in a prosecution based upon a violation of such provisions. The provision therefore does not possess such uncertainty or ambiguity as to deny due process of law under the Fourteenth Amendment to the Constitution.

Likewise, the terms of Section 16 of the Bradford Act, prohibiting labor organizations from accepting into membership persons employed in an executive, administrative, professional or supervisory capacity, when other classes of employees are permitted membership therein, are provisions well understood in labor circles. Labor organizations for many years have adopted provisions in their constitutions or by-laws forbidding membership to such supervisory employees. The expressions used to accomplish this purpose sometimes vary. They are generally understood, however, to comprehend employees which are authorized to exercise the authority to hire or fire. These terms are used and will be construed by the Court in their popular meaning as related to labor organizations. Strictly construed, the courts might well hold that a supervisory employee, as used in the Act, has reference only to one who is employed exclusively in such capacity. These terms substantially appear in the Fair Labor Standards Act, and supervisory employees are separately classified in the administration of the National Labor Relations Act. A labor organization required to conform to the provisions of this Section could not well contend that its meaning is too uncertain to enable it so to do, nor could it well contend that it was not informed of the nature and cause of the accusation if confronted with a prosecution. The enforcement of the Act is appropriately directed against the organization, and not individuals.

ARGUMENT

I

THE RECORD PRESENTS NO CASE OR CONTROVERSY WITHIN THE MEANING OF ARTICLE III, SECTION 2 OF THE CONSTITUTION OF THE UNITED STATES.

This proceeding was instituted under the declaratory judgment statute of Alabama (Section 156 to 168, Title 7, Code of Alabama 1940) for the purpose of determining the construction or validity of the Bradford Act, and to obtain a declaration of rights, status, or other legal relations thereunder (Section 157, Title 7, Code of Alabama 1940).

The Supreme Court of Alabama, in considering the declaratory judgment statute, commented:

> "The courts, however, are not concerned with the wisdom or policy that induced the enactment of these statutes. That is a matter within the province of the lawmaking body of magistracy—the Legislature.
>
> "The courts are concerned, however, with their interpretation and application to accomplish the purpose and remedy the evils at which such legislation is directed—to see that the pro-

ceedings invoke judicial power, to the end that their judgments are binding."

Jefferson County v. Johnson, 232 Ala. 406, 168 So. 450.

And in the case of *Scott v. Ala. State Bridge* Corporation, 233 Ala. 12, 17; 169 So. 273, 277, the Court, in referring to the Alabama declaratory judgment statute, held:

"Controversies touching the legality of the acts of public officials, or public agencies, challenged by parties whose interests are adversely affected, is one of the favored fields for such declaratory judgment, styled in the act and in the authorities, the 'declaration'. Official action, done or threatened, challenged as unlawful, a usurpation of official power, whether lack of authority appears in the terms of the statutes, or because of unconstitutionality thereof, are said to be determinable in this manner rather than force the parties to seek injunctive relief, which involves many questions going to the propriety of such relief."

While this Court has held that the determination of its judicial power, as defined in Article III, Section 2 of the Constitution, is not dependent upon the form of the proceeding, it has nevertheless adherred to a different—a much stricter—rule in determining whether a case or controversy is presented

which invokes its power to pass upon the constitutional validity of a State statute or Act of Congress.

In the case of *N. C. & St. L. RR Co. v. Wallace*, 288 U. S. 249, the Court said:

> "The states are left free to regulate their own judicial procedure. Hence, changes merely in the form or method of procedure by which federal rights are brought to final adjudication in the state courts are not enough to preclude review of the adjudication by this Court, so long as the case retains the essentials of an advisory proceeding, involving a real, not a hypothetical controversy, which is finally determined by the judgment below."

In that case, the proceeding was construed the same as if it constituted a bill to enjoin the collection of a tax from the petitioner, dependent upon the validity of the statute imposing the levy, which was challenged as being in conflict with the Constitution of the United States; and all of the facts and circumstances relating to the question of tax liability of petitioner were introduced and considered by the Court.

In the case of *Massachusetts v. Mellon*, 262 U. S. 447, the Court quoted approvingly from *Cherokee Nation v. Georgia*, 5 Pet. 1, 8 L. Ed. 25, 75, the following:

> " 'It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.
>
> " 'This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual or threatened operation, upon rights properly falling under judicial cognizance, or a remedy is not to be had here.' "

See:

Alabama Power Co. v. Ickes, 302 U. S. 464, in which the Court refused to pass upon the validity of an Act of Congress;

Howat v. State of Kansas, 258 U. S. 181, where the Court refused to pass upon the validity of the Industrial Relations Act of Kansas:

Allen-Bradley Local vs. Wisconsin Employment Relations Board, 315 U. S. 740, in which the Court confined its consideration of the State labor act to the validity of the specific order entered thereunder and commented:

> "We deal, however, not with the theoretical disputes but with concrete and specific issues raised by actual cases";

and again said:

> "We are not under the necessity of treating the state act as an inseparable whole";

White v. Johnson, 282 U. S. 367, in which appellant attempted to enjoin enforcement of the criminal provisions of the Radio Act of 1927 on the ground that it was in conflict with the Constitution of the United States. In that case the Court said:

> "The constitutionality of a statute is not drawn ino question except in connection with its *application* to some person natural or artificial". (Emphasis added);

Arkansas Fuel Oil Co. v. State of Louisiana, 304 U. S. 197, in which the Court, in declining to pass upon a State statute, quoted approvingly from *Baker v. Grice*, 169 U. S. 284, 292, the following rule:

> " 'It is matter of common occurrence—indeed, it is almost the undeviating rule of the courts, both state and Federal—not to decide constitutional questions (of the validity of a State Act) until the necessity for such decision arises in the record before the court.' ";

Anniston Mfg. Co. v. Davis, 301 U. S. 337, where the Court, in refusing to pass upon the constitutionality of an Act of Congress said:

> "Constitutional questions are not to be decided hypothetically. When particular facts control the decision, they must be shown."

The taxpayer was then remitted to actual trial of his rights under the statute relating to recovery of "processing" taxes;

Bordens Farm Products Co. v. Baldwin, 283 U. S. 194;

Baker v. Grice, 169 U. S. 284;

Ashwander v. T.V.A., 297 U. S. 288, and concurring opinion by Mr. Justice Brandeis in which he summarized the rules under which the Court has avoided passing upon constitutional questions (pages 345-348), and cited supporting authorities.

In the case of *Watson v. Buck*, 313 U. S. 387, the appellee attempted to enjoin the enforcement of two Florida statutes regulating the business of persons holding musical copyrights on the ground that it was in conflict with the Constitution of the United States. These statutes contained forty-two separate sections. In declining to pass upon any except one phase of the statutes (in which the Court held that the Federal copyright laws did not deprive the States of their recognized power to regulate combinations in restraint of trade), the Court, speaking through Mr. Justice Black, said:

> "Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case. It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it."

This case was cited in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 747, and in *Spector Motor Service v. McLaughlin*, 65 S. Ct. (Advance Sheets) 152, 154. In the last cited case, Mr. Justice Frankfurter said:

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable."

Applying the foregoing rules to the case at bar, we find little more in this case than an opinion construing the statute at the instance of interested parties. It is true that the petitioners, as labor organizations, are amenable to the provisions of the statute; and the petitioner B. E. Jones as a member had an

interest therein. It is true that the respondents are State officers charged with certain duties in the enforcement of the criminal or penal provisions of the statute, and, unless the statute is declared unconstitutional, purpose and intend to perform such duties. The Supreme Court of Alabama, pursuant to the declaratory judgment statute, proceeded to render an opinion upon the constitutionality of various provisions of the statute brought under attack. Petitioners did not separately challenge all of the sections or provisions of the Act. In passing upon the statute, the Court commented:

> "All parties upon this appeal argue the case upon the assumption of the regularity of the proceeding in every respect, and the case will be so considered here." (R. 321)

The court below, in passing upon the various provisions of this statute, pursuant to the declaratory judgment statute, was not faced with the rules limiting its power and jurisdiction which confront this Court under Article III, Section 2, of the Constitution of the United States.

Since the right of a State to adopt statutes regulating labor organizations is hardly to be questioned (*Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, and *Thomas v. Collins*, No. 14 October Term, 1944), Sections 7, 15, and 16 of the Bradford Act are not so "flagrantly and patently violative" of the Constitution as to

present a case or controversy requiring this Court to pass thereon without awaiting the trial of a case in which the validity of the specific provisions is necessarily involved. (*Watson v. Buck*, 313 U. S. 387).

For instance, Sections 7 and 16 are challenged as infringing the civil rights of assemblage, speech, press, and petition guaranteed under the First and the Fourteenth Amendments to the Constitution. Yet no specific instance of an attempt to exercise such rights or any attempt to interfere therewith is shown in the Record. (Cf. *Thomas v. Collins*, No. 14, October Term, 1944.)

Section 7 requires the labor organization, only after it is organized and has adopted a constitution and by-laws, to file the same with the Director of the Department of Labor, before it proceeds to function pursuant thereto. Nothing in the decision of the court below appears to the contrary, therefore any question of infringement of the civil rights of individuals under Section 7 would be hypothetical at most, in addition to violating this Court's rule to first require the State Court to pass upon the specific application thereof. Nothing showing such an infringement was presented to the court below.

Section 15, prohibiting the practice of *charging* for "work permits", is challenged as being indefinite, yet no specific instance involving a prosecution under this provision with the attending facts and cir-

cumstances is here presented; nor has the court below passed upon any specific application of this provision. The terms are shown to have been borrowed from labor organizations and are well known and understood in such circles. It is not their use which is forbidden, but the charge therefor in addition to initiation fees or dues collected by the organization.

Notwithstanding the fact that the Supreme Court of Alabama, pursuant to the Declaratory Judgment Act, was empowered to render an opinion upon the constitutional validity of Sections 7, 15, and 16 of the Bradford Act, we do not believe that, under the different rules applicable to this Court, a case or controversy within the power and jurisdiction of this Court is presented, or that a decision thereon by this Court is necessary or unavoidable prior to the institution of a case involving the specific application of the statutory provisions, in which the party affected may plead in defense any constitutional rights, privileges, or immunity which he deems affected by the statute.

The case of *Aetna Life Insurance Co. v. Haworth*, is clearly distinguishable. The facts and circumstances with reference to permanent disability under a specific insurance policy and the resulting questions of liability or non-liability were there presented to the Court in a declaratory judgment proceeding. There we find both the form and substance of a real case or controversy.

In the case of *Pierce v. Society of Sisters of Holy Names*, 268 U. S. 510, cited by petitioners, the defendants sought an injunction against the enforcement of a State statute under which children would be required to attend public schools, and would be denied the privilege of attending schools conducted by defendants, which was obviously discriminatory and which involved immediate and irreparable injury to defendants. The facts of that case are clearly distinguishable from a case where an interested party merely seeks a declaration construing various statutory provisions.

In the case of *J. D. Adams Mfg. Co. v. Storen*, 304 U. S. 307, cited by the petitioners, the taxpayer, by a declaratory judgment proceeding, sought a determination of the constitutional invalidity of a State statute of Indiana imposing a gross income tax, the levy of which upon the taxpayer with penalties was threatened; and the facts relating to the conduct of the taxpayer's business were specifically presented in a determination of the application of the tax and the invalidity thereof as affecting gross receipts of the taxpayer derived from interstate commerce, which the State was without power to tax.

In *Wright v. Central Kentucky Gas Co.*, 297 U. S. 537, cited by petitioners, certain gas consumers filed a declaratory judgment suit attacking the validity of a resolution and ordinance of the City. It was decided by the State Court that the resolution

and ordinance were valid and that the City properly represented any interest of the gas consumers. This Court, reaching the conclusion that the gas consumers had no vested right which precluded the City from adjusting the controversy, affirmed the case.

The case of *Colorado National Bank of Denver v. Bedford*, 310 U. S. 41, cited by petitioners, was a declaratory judgment proceeding to determine the tax liability of the Bank as applicable to certain services rendered or performed by it (rental of safety deposit boxes), against the payment or collection of which tax the Bank raised the question of its immunity as a Federal instrumentality. The particular facts and circumstances involved, necessary for a consideration of the question, were presented for the consideration of the Court.

In each of the cases relied upon by petitioners, there was an actual or threatened application of the statute, in an adversary proceeding, in which the facts and circumstances showing liability or threatened injury were presented in a case or controversy consistant with the rule of this Court, clearly distinguishable from the case under consideration. See *Borden, et als v. Sparks*, et als, 54 Fed. Supp. 300, in which a three-Judge District Court upheld the validity of Section 7 of the Bradford Act, but declined to pass upon other provisions thereof.

II

SECTION 7 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWER, AND DOES NOT INFRINGE ANY RIGHTS OF FREE SPEECH OR ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Regulation is a Reasonable exercise of the Police Power.

In the first sentence of Section 7 of the Bradford act, it was provided as follows:

> "Section 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. * * *"

It will be noted that the Legislature was here dealing, First,—with labor organizations then functioning in Alabama; and Second,—with Labor or-

ganizations which might thereafter desire to function in Alabama.

As to the first, they were allowed sixty days within which to file a copy of the constitution and by-laws of the organization. Organizations in the second class, those thereafter desiring to function in the State, before doing so, were required to file copy of the constitution and by-laws of the organization. No fee is imposed for the filing of such documents.

Provision is made for copies of any amendments to the constitution and by-laws to be filed within thirty days after adoption. No fee is imposed for such filing.

Every labor organization functioning in the State, having twenty-five or more members, is required annually on or before February 1 of the next succeeding year to file a report as of December 31 preceding the date of filing showing certain information as to the organization, including a financial report covering the preceding twelve months. At the time of the filing of such report the labor organization is required to pay a filing fee in the amount of $2.00.

No license is imposed or attempted to be imposed upon any labor organization as a condition to the right to function in the State; no license is issued or authorized to be issued; nor are its requirements

considered singly or in the aggregate tantamount to the imposition of a license.

The Alabama Supreme Court, in its opinion in this case, on this point, pertinently remarked:

> "In the first place, there is no license required. The fee of $2.00 is merely a regulatory and incidental matter, collected for the purpose of defraying the expense incidental to the furnishing of the forms and reports, and to the filing thereof with the Director."

The Act provides for the creation of a Department of Labor, under the administration of a Director of Labor who is required to investigate labor disputes and endeavor to promote peaceful and voluntary adjustments or settlements thereof, to the end that strikes, lockouts, boycotts, blacklists and discriminations may be avoided (Section 5(a)). It provides for the creation and functioning of boards of mediation for the settlement of labor disputes (Section 6).

The requirement for the filing with the Department by labor organizations of copies of their constitution and by-laws, and of annual financial statements and reports is a reasonable regulation, to furnish information to the Department to show what labor organizations are functioning in the State, where they are located, the name of their officers, the dates of election of officers, the number of its

members, as well as to acquaint the Director with the form or the organization, its field of operation, its rules and regulations, and other facts with respect to its actual operations which might be necessary or beneficial in administering the Act, or in making recommendations for amendments or changes therein. This is to the end that the Director and his assistants, representing the public interest in the enforcement of the Act in its various aspects, may be familiar with labor organizations and their activities, and may better be able to perform their functions.

These provisions follow the pattern adopted in many instances where State regulations are imposed upon businesses or activities affected with a public interest. The necessity for information as a basis for action on the part of any representative or mediary of the State is so obvious that further discussion or the citation of authorities or illustrations would seem unnecessary.

However, attention is called to the Act of Congress requiring the filing of financial reports by labor organizations with the Secretary of the Treasury even though expressly exempted from any tax. (U. S. Revenue Act of 1943, Section 112).

In the case of *Borden v. Sparks*, et als, 54 Fed. Sup. 300, in a hearing before three judges, on an application for a preliminary injunction, to enjoin

the enforcement of the Bradford Act, the Court in denying the injunction held:

> "The provisions of Section 7 seem to us reasonable and designed to obtain a legitimate end of a regulation by the State under its police power".

In attacking the validity or reasonableness of the regulations contained in Section 7 the burden of proof was upon the petitioners, and there is an utter lack of proof of any unreasonableness in fact. To the contrary, the petitioners have attempted to attack the reasonableness of these regulations upon the erroneous theory that compliance is tantamount to the imposition of a license. Both the Supreme Court of Alabama and the District Court of the United States have correctly and emphatically held to the contrary, and petitioners cite no apt authority in support of their insistence.

See:

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740.

Howatt v. Kansas, 258 U. S. 181;

Wisconsin Labor Relations Board v. Ruepino Leather Company (WIS) 279 N.W. 673, 117 A.L.R. 398;

People ex rel. Bryant v. Zimmerman, 278 U.S. 63.

Cf. *Murdock v. Pa.*, 319 U.S. 105;

DeJonge v. Oregon, 299 U.S. 355.

The petitioners plead, and the record shows, that the payment of dues to a labor organization, in some instances, entitled the member to certain death, disability, funeral and pension benefits, in addition to economic benefits under any collective bargaining contract. (R. 68-69, 70, 73, 74, 75, 76, 77, 78). See also testimony of Petitioner B. E. Jones (R. 305, 306). Also see affidavit of William Greene (R. 259, 260).

Admittedly organizations engaged in the business of insurance are subject to regulation. (*Hardware Dealers Mut. Fire Ins. Co. v. Glidden*, 284 U. S. 151, and *Life & Casualty Insurance Company v. McCray*, 291 U. S. 566).

The reasonableness of the requirement of furnishing financial reports to the Department is illustrated in a similar requirement subsequently adopted by the Congress. The principle is supported in many authorities. The requirement that a labor organization furnish financial reports to its members is not shown to be unreasonable, but customary. (See affidavit of W. O. Hare, R. 238). These re-

quirements may well have been designed to deter or prevent any abuse or fraud involved in the management or expenditure of funds collected from many thousands of members, though in the aggregate their expenditure is necessarily entrusted to officers or agents of the organization.

(B) The Regulation Involves no Infringement of Free Speech or Assembly.

Petitioners are in error in contending that these provisions were intended to interfere with the exercise by any individual of his rights of free speech or assembly, or that such is the result of a compliance therewith. For instance, labor organizations already functioning in the State were allowed a period of sixty days within which to file a copy of the constitution and by-laws. No officer could refuse to accept the filing of these documents and the payment of no fee was involved.

As to labor organizations thereafter desiring to function in Alabama, the statute clearly contemplates the exercise of any and all rights of free speech or free assembly necessary or incident to the creation of the organization, including the adoption of its constitution and by-laws. It is only after the organization is complete and the constitution and by-laws have been adopted that any compliance is required, namely, the filing of a copy of such constitution and by-laws without the payment of any

fee; and the Director of Labor is not authorized to deny the filing.

Petitioners are in error in contending that there is no distinction between a labor union and its members, and consequently any regulation of a labor union infringes individual rights of free speech or assembly.

It has been held by this Court that, "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures * * * * * *". (*Hague v. C.I.O.*, 307 U. S. 496, 514.) See also *Northwestern Life Insurance Co. v. Riggs*, 203 U. S. 243, 255; *Western Turf Ass'n. v. Greenberg*, 204 U. S. 359, 363.

In the case of *Hague v. C. I. O.*, supra, the action involving the rights of freedom of speech and freedom of press was dismissed as to all but the individual defendants.

And, in the recent case of *United States v. Jasper White*, Vol. 88, L. Ed., Advance Sheet No. 16, page 1149, this Court denied to an individual representative or a member of a labor organization the protection of privileges or immunities against unreasonable search and seizure under the Fourth Amentment, and against self-incrimination under the Fifth Amendment, with respect to books and records of the labor union, of which he was a member, and, among other things; said:

"But individuals, when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privilege against self-incrimination." (p. 1152);
And further:

"Respondents could not claim the privilege on behalf of the union because the union did not itself possess such a privilege." (p. 1154.)

No instance or illustration of the manner in which these individual freedoms have in fact been hindered or infringed upon is shown in the record; nor did the Court below envision or consider any circumstances under which such individual rights would encounter infringement or interference. (R. 335, 336, 337, 338, and *Borden v. Sparks*, 54 Fed. Sup. 300. Cf. *Thomas v. Collins*, No. 14, October Term 1944).

The filing provisions in Section 7 of the Bradford Act are directed against the labor organization itself, and not the individual.

In *People ex rel. Bryant v. Zimmerman*, 278 U. S. 63, this Court held that the power of the State

to require the filing of information by an association includes the power to enforce such provision.

Petitioners are in error in their contention that enforcement of the filing provisions of Section 7, unlike the provisions of the Federal Act relating to the filing of financial reports (U. S. Revenue Act of 1943, Section 112) is directed against the individual members. Such is not the case. The penal provisions of Section 7 are directed against the officers or agents of a defaulting organization; and the penal provisions in Section 18 are specifically imposed only upon the organization itself for a violation by it of the Act.

The court below has not held that employees may not freely speak or assemble for the purpose of creating a labor organization. This right is expressly recognized throughout the Bradford Act, and in Section 13 it is provided that nothing in the Act shall "be so construed as to invade unlawfully the right to freedom of speech". The right to join labor organizations is specifically protected under Sections 8 and 18 of the Bradford Act.

Petitioners' contention that the provisions of Section 7 infringe the individual's right of free speech and assembly disregards the fact that labor organizations are affected with such a public interest as the State may, in the exercise of its police power, impose reasonable regulations, and of course may, by appropriate means, enforce compliance; and

that no member individually may complain if this results in a forfeiture of privileges otherwise enjoyed by the organization as such. So long as the organization of which he is a member is in default in compliance with a valid law, surely he may not complain of consequential effects upon individual rights which he as a member would otherwise be entitled to enjoy.

So long as the labor organization complied with the law—a reasonable regulation—there would be no occasion for the individual member to complain of any consequential infringement of his civil liberties as a member of the organization.

In the circumstances here involved, there is no direct interference with the civil rights of the individual. Such rights are not guaranteed to the organization. The law is not directed against the individual. It is therefore not necessary for the Court to consider any question of infringement of such individual civil rights before determining the validity of the regulation. If the regulation is reasonable and the enforcement thereof appropriate, no question of interference with civil rights of the individual members may intervene to prevent the consequences of the default or violation by the organization. But this would not prevent the individuals from creating another organization.

III

SECTION 15 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWER.

Section 15 reads as follows:

> "Section 15. It shall be unlawful for any labor organization, any labor organizer, any officer, agent, representative or member of any labor organization, or any other person, to collect, receive or demand, directly or indirectly from any person, any fee, assessment, or sum of money whatsover, as a work permit or as a condition for the privilege of work; provided, however, this shall not prevent the collection of initiation fees or dues."

The purpose of this Section is to prevent labor organizations from the practice of making a charge for the issuance of what is commonly known as a "work permit"; or from exacting any charge for the free exercise of the right or privilege to work. It expressly excludes charges imposed for initiation fees or dues.

This Section, in its purpose, is related to and is an expression of the declaration of policy incorporated in Section 1, recognizing the inherent "right to work". It is not designed to interfere in any

manner with the collection of initiation fees which a labor organization might impose or any amount imposed by it upon its members as dues.

This regulation was adopted to protect and enforce the fundamental right to work, without any design of interfering with the collection of "initiation fees or dues" by a labor organization. The issuance of work permits *per se* is not forbidden, but the making of any charge therefor in addition to initiation fees or dues.

The Legislature apparently knew of or foresaw abuses involved in permitting labor organizations to charge or exact any amount from members or non-members—over and above all initiation fees and dues—as a prerequisite or condition to the acceptance of employment. This right to work, equally with the right to join or not join a labor organization, the Legislature sought to guard and protect. It did not attempt to regulate the amount of any initiation fee or the amount of any dues which the members of a labor organization might impose upon themselves.

It will be noted that the amount of the charge for a working permit, as shown in the by-laws of the United Brotherhood of Carpenters and Joiners of America, is not definitely fixed in some instances. In Section 46 A, it is provided: "He shall pay the prevailing charge for a working permit in the jurisdiction where he goes to work." (R. 71).

In considering the constitutional validity of Section 15 of the Bradford Act, before application of the provision to a specific case involving its violation, the Court is not given an opportunity to consider the facts and circumstances involved. The case, as it relates to this section, must largely be considered upon assumed or hypothetical facts and assumptions. The burden was on the petitioners to show the unreasonableness and lack of any necessity for this regulation. However, the use or practice of issuing such permits and the amounts charged therefor was not discussed by any witness introduced by the petitioners.

It is charged that the terms are ambiguous, yet none of the witnesses for petitioners, all of whom were officials of labor organizations or members thereof, testified with respect to the practice, custom or necessity, the abuse or non-abuse, involved therein.

It was, therefore, not incumbent upon the respondents to introduce countervailing evidence of specific instances of the abuses and dangers involved in the practice, or of instances of interference thereby with the free exercise of the right to work.

If the regulation is found to be a reasonable exercise of the police power, as was determined by the court below, it follows, of course, that the State has the power to enforce the provision, notwithstanding the previous practice or usage or existing provisions in the constitution or by-laws of a labor or-

ganization permitting, providing for, or sanctioning the same. Since the amount which has actually been exacted or demanded by labor organizations of members or non-members for the temporary privilege of working is not shown in the record, the Court may well assume that the practice at times has been subject to abuse; that large and unreasonable exactions have interfered with the exercise of the right to work, and that such facts were known to the Legislature.

As expressed by Mr. Chief Justice Hughes, in *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 448:

> "Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned."

And this Court will assume the existence of facts supporting legislative judgment, unless such assumption is precluded by facts made known or by facts of which the Court takes judicial knowledge. (*United States v. Carolene Products Co.*, 304 U. S. 144, 152.)

IV

SECTION 16 OF THE BRADFORD ACT IS A REASONABLE EXERCISE OF THE POLICE POWERS, AND DOES NOT VIOLATE THE FOURTEENTH AMENDMENT OR INFRINGE THE RIGHTS OF FREE SPEECH OR ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

(A) The Regulation is a Reasonable Regulation of the Exercise of the Police Power.

Section 16 is designed to prevent labor organizations from accepting certain supervisory employees as members, when under the constitution and by-laws of the organization other workers or employees are admitted to membership therein. This regulation does not prohibit the organization or functioning of labor organizations composed of supervisory employees, but merely has the effect of requiring separate labor organizations for these two classes of employees.

The underlying reason supporting this classification, in the regulation of labor organizations, is the well recognized fact that supervisory employees are related to management. They are the representatives of management in dealing with other employees and employee labor organizations.

"No man can serve two masters; for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." Matthew 6:24.

There are numerous decisions recognizing this distinction between supervisory employees and other employees or workers.

See:

United States v. Laudani, 320 U. S. 543, 547.

Humble Oil case, 16 N. L. R. B. 112.

J. I. Heinz Co. v. N. L. R. B., 311 U. S. 514.

International Association of Machinists v. N. L. R. B., 311 U. S. 72.

N. L. R. B. v. Cleveland Cliffs Iron Co., C. C. A. 6, February 11, 1943.

The Sherwin Williams Co., 37 N. L. R. B. No. 44.

Boeing Airplane Co., 46 N. L. R. B. No. 35.

Marshall Field & Co., 34 N. L. R. B. 1.

Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673.

General Motors Sales Corp., 34 N. L. R. B. 1052.

United States Stamping Company, 1 N. L. R. B. 164.

Maryland Drydock Company, Case Nos. R. 5212 and 5214.

Union Collieries Coal Co., 41 N. L. R. B. 961.

The difference in classification between other employees and "executive," "administrative" and "professional" employees is recognized in the Fair Labor Standards Act, Section 13 (a) (Section 213, Title 29, U. S. C. A.). See "Labor Disputes and Collective Bargaining," Volume 2, by Ludwig Teller.

Since supervisory employees as distinguished from other employees are shown to fall within a distinct classificiation, they may be so treated; and separate regulations imposed upon labor organizations composed of supervisory employees in one instance or other employees in the other are, therefore, not arbitrary or capricious.

A broad latitude is allowed the Legislature in the matter of classification. See: *Borden's Farm*

Products Co., Inc. v. Baldwin, 293 U. S. 194; *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61; *Tigner v. State of Texas*, 310 U. S. 141; *Silver v. Silver*, 280 U. S. 117; *Bayside Fish Flour Co. v. Gentry*, 297 U. S. 422; *Metropolitan Casualty Ins. Co. of New York v. Brownell*, 294 U. S. 580.

A violation of this regulation, as in the case of Section 7, is enforceable only against the labor organization itself. (See Section 18 of the Act.)

It is expressly provided in Section 16 that it shall not be construed to invalidate any existing insurance contract.

The regulation in requiring separate labor organizations for supervisory employees and other employees is not only not shown to be unreasonable, but in accord with long established labor practice. There are two classes of employees involved. The one has a different relation than the other. Supervisory employees are more closely related to management, and responsible for carrying the policies of management into effect; and management is held responsible for their acts in a different manner and to a different degree. In fact, they must sit across the table in the negotiation of a collective bargaining agreement. It would seem reasonable therefore that they should be free from disciplinary action which might be imposed upon them by workers in a different classification. This was illustrated by the witness B. E. Jones, when he testified:

"As superintendent of a plant, I am subject to discipline by the union of which I am a member, should I violate any of the union rules." (R. 306.)

And again:

"I would say that in some of these plants some of the men in a supervisory capacity would feel, at times torn between loyalty to their employers and loyalty to their employees. This would probably happen when the man acting in a supervisory capacity was not in sympathy with the union." (R. 308.)

In the case of *N. L. R. B. v. Cleveland Cliffs Iron Co.*, C.C.A. 6, February 11, 1948, the Court held:

"Our analysis of controlling authorities leads to the conclusion that the employer must keep his hands off completely and exert no influence over his employees, directly or indirectly, in their efforts to organize for purposes of collective bargaining. This obligation is not met by passive neutrality of management itself. As previously pointed out, it requires that management shall not only preserve its own neutrality, but by effective action, insure the neutrality of supervisory employees and all who undertake to interfere under circumstances

where such interference may reasonably be interpreted as the voice of authority."

For these reasons, it has been held that a supervisory employee may be compelled to surrender any union affiliation.

The Sherwin Williams Co., 37 N. L. R. B. No 44.

Boeing Airplane Co., 46 N. L. R. B. No. 35.

Marshall Field & Co., 34 N. L. R. B. 1.

Rock Hill Printing & Finishing Co., 29 N. L. R. B. 673.

General Motors Sales Corporation, 34 N. L. R. B. 1052.

In the case of *Maryland Drydock Company*, Case Nos. R-5212 and R 5214, the National Labor Relations Board definitely ruled that supervisory employees should not be permitted to establish bargaining units under the Act, and were not entitled to the protection generally afforded to workers or other employees. In this connection, it was stated:

"We are of the opinion that in the present state of industrial administration and employee self-organization, the establishment of bargain-

ing units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the Act."

And further held:

"To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests."

In *United States v. Laudani*, 320 U. S. 543, 547, in holding a foreman subject to prosecution under the "Kickback Act", (41 U.S.C.A., Section 276b) it was said:

"Foremen vested with full power to employ and discharge subordinates could frustrate the objective of the Act just as effectively as could their employers, and foremen not given such broad powers might nevertheless be able to use their authority to accomplish the same result."

(B) The Regulation does not Infringe Free Speech or Assembly.

For the same reasons as hereinabove stated in discussing the provisions of Section 7 of the Bradford Act, there is no infringement of the individual rights of free speech or assembly involved in Section 16.

The regulation is imposed directly upon the labor organization itself and not upon the individual members.

V

NEITHER SECTION 7 NOR SECTION 16 DENIES RIGHTS GRANTED OR PROTECTED UNDER THE NATIONAL LABOR RELATIONS ACT.

The National Labor Relations Act is designed to guarantee or protect the right of collective bargaining, to regulate practices affecting the choosing of representatives, and the negotiation of collective bargaining agreements with respect to employees employed in commerce as defined in the Act. To that end, regulations are imposed upon employers to prevent what are defined as unfair labor practices.

The Federal Act imposes no regulations whatever upon labor organizations, nor does it attempt to define or regulate unfair labor practices between employees, whether members or non-members of labor organizations.

The Bradford Act likewise recognizes and protects the right of collective bargaining as to all employees in the state, whether engaged in commerce, as defined in the National Labor Relations Act, or engaged wholly in intrastate employment, not affected by the National Labor Relations Act. The Bradford Act does not prohibit the organization and functioning of any labor organization, or impose thereon any license or censorship. For the purpose of furnishing necessary or desirable information in the administration of the Act, it requires the filing of a copy of the constitution and by-laws adopted by the organization, and thereafter annually requires the filing of financial reports.

It is inconceivable that the Congress intended, by sanctioning the negotiation of collective bargaining agreements through labor organizations, to exclude such organizations from any form of state regulation under the police power.

As stated in *Allen Bradley Local v. Wisconsin Relations Board*, 315 U. S. 740, 749, "the intention of Congress to exclude states from asserting their police power must be clearly manifested". (See authorities there cited).

See also *Christoffel v. Wisconsin Employment Relations Board*, 243 Wisc. 332, 10 N. W. (2nd) 197, certiorari denied October 25, 1943, 64 S. Ct. Rep. 90.

Since Congress has not undertaken the regulation of labor organizations (other than such regulations as may be imposed upon railway labor organizations in consequence of certain exclusive remedies provided under the Railway Labor Act), we are unable to find in the Bradford Act any provision which might be said to conflict with the National Labor Relations Act or any provision which would prevent a labor organization functioning pursuant to the Bradford Act from performing any function which might be devolved upon it in the administration of the National Labor Relations Act.

It should not be overlooked, that while the National Labor Relations Act is limited to employment constituting what is defined as interstate commerce or as affecting interstate commerce, the Bradford Act has a separate field of operation with respect to employees engaged in intrastate employment not covered by the Federal Act, and as to labor organizations which may be formed by such employees.

This Court in numerous instances has recognized the right of the states in the exercise of their police power to impose regulations, so long as the field has not been preempted by Federal legislation, and there are many instances in which state regulation is sustained, even though in a sphere which might be subject to Federal legislation, but upon which subject Congress has not yet acted. (See *South Carolina State Highway Department v. Barnwell Bros. Inc.*, 303 U. S. 177; *U. S. v. Southeastern Underwriters Association*, L. Ed. Adv. Sheet, Vol.

88, No. 16, p. 1082.) Cf. *Thomas v. Collins*, No. 14, October Term 1944.

VI

THE EXEMPTION FROM THE TERMS OF THE BRADFORD ACT OF LABOR ORGANIZATIONS SUBJECT TO THE RAILWAY LABOR ACT DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE CONSTITION OF THE UNITED STATES.

In the enactment of the Bradford Act, the Legislature was authorized to adopt a classification of labor unions, so long as it was based upon reason or practical considerations, and was not purely arbitrary.

This rule was expressed by Mr. Chief Justice Hughes in *National Labor Relations Board v. Jones and Laughlin*, 301 U. S. 1, 17, as follows:

> "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power."

And as said in *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389, 400:

"The equal protection clause does not detract from the right of the state justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.'"

Also see *People ex rel Bryant v. Zimmerman*, 278 U. S. 63.

The classification in this instance, resulting from the exclusion of labor organizations the employees of which are subject to the Railway Labor Act, is certainly not arbitrary, but was doubtless suggested and adopted in consequence of the fact that Congress had recognized substantial differences in enacting labor legislation dealing with Railway employees and other employees, the one in the Railway Labor Act and the other in the National Labor Relations Act.

This distinction and the substantial differences involved, regardless of some similarities, may be found not only in a comparison of the two Acts, but in the long history of the development of the Railway Labor Act.

In the case of *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 328, 329, it was said:

"The present Act is the product of some fifty years of evolution. For many years the only sanctions under the various Congressional enactments in this field were publicity and public opinion."

And again, in discussing the fact that Congress had eventually excluded judicial determination of certain issues and, in lieu thereof, provided different remedies, the Court said (Page 337):

"However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. To the contrary; it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive."

There are substantial differences in labor relations as regulated under the Railway Labor Act, than as affected or regulated by the National Labor Relations Act, specific instances of which we do not deem it necessary to discuss. (See *Steele v. L. & N. R. Co.*, 65 S. Ct. 226)

It has been decided that, in the enactment of the National Labor Relations Act, Congress did not preempt the field of legislation but had left room for State regulation, particularly as to the conduct of employees, and as to the regulation of labor or-

ganizations themselves, so long as not conflicting with the provisions of the National Labor Relations Act, or orders adopted pursuant thereto. For these and other reasons there remained a field in which State regulation of labor relations might be exercised without conflicting with the National Labor Relations Act. This was recognized in the following cases:

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740;

Thomas v. Collins, No. 14, October Term, 1944;

But, from the decisions of this Court construing the Railway Labor Act, it would appear that Congress has preempted the field, as concluded by the court below.

And, there is a field of operation for the Bradford Act as it relates to labor relations affecting persons employed by employers engaged exclusively in intrastate commerce, and organizations of such employees, not within the influence of either the Railway Labor Act or the National Labor Relations Act.

In the adoption of the National Labor Relations Act, the Congress expressly excluded or exempted "persons subject to" Sections 151-163, Title 45, U.S.C.A.—the Railway Labor Act.

VII

SECTIONS 15 AND 16 OF THE BRADFORD ACT ARE NOT SO UNCERTAIN OR AMBIGUOUS IN THEIR TERMS AS TO CONSTITUTE A DENIAL OF DUE PROCESS OF LAW.

(A) The Terms "Work Permit" as used in Section 15 have a Definite Meaning.

The record shows that the terms "work permit" or "working permit" are well understood in labor circles. These terms appear in the by-laws of some of the petitioner organizations, and which we have hereinabove discussed. The validity of such a regulation, in its very nature, may not well be determined without a consideration of the facts and circumstances involved in the prohibited practice. On this point the court below commented:

> "Whether or not certain practices to which counsel refer are to be construed as coming within the provisions of the Act are questions which will arise when the proper case is presented." (R. 349.)

See *Watson v. Buck*, 313 U. S. 387.

No witness for the petitioners testified that these terms were not well understood by labor or

ganizations. In fact, they appear to have been literally borrowed from the usage thereof by labor organizations. It is inconceivable, therefore, that a labor organization, in a prosecution for a violation of this regulation, could in good faith plead ignorance of their meaning or of the nature and cause of the accusation.

(B) The Terms "Executive, Administrative, Professional, or Supervisory Employee" as used in Section 16 of the Bradford Act have a Definite Meaning.

The terms "executive", "administrative", "professional" and "supervisory" employees or persons employed in such capacities are terms well understood in labor circles, decisions, orders and legislation relating to the employment of labor and labor relations generally. While, in some instances, questions of fact might well arise as to whether an employee is engaged in a supervisory capacity within the meaning of some law or regulation adopted thereunder, no instance of doubt is presented in the record of this cause. The petitioner B. E. Jones testified that he was the Superintendent of the plant (R. 306). The court below had no specific instance presented which gave rise to any doubt or ambiguity in the application of these terms.

The court below did not construe the exact meaning of the terms used in Section 16 of the Bradford Act, for the obvious reason that the record did

not present an instance of the application of such terms in a manner which called for an interpretation. For these reasons this Court, in adhering to its rule that it will not pass upon the constitutionality of a State act prior to a construction thereof by the Supreme Court, of the State, may well decline an invitation to express an opinion on this point in advance of a more definite construction by the Supreme Court of Alabama.

See *Spector Motor Service v. McLaughlin*, 56 S. Ct. (Advance Sheets) 151.

While it is true that in the Fair Labor Standards Act, in using the terms "executive", "administrative" and "professional", provision is made for such terms to be defined and delimited by regulations of the Administrator (Title 29, Section 213, U.S.C.A.), the court below has not so construed the meaning of this State statute as to cast doubt upon its application nor has the court below passed upon the power or authority of the Director of the Department of Labor to construe these terms in the administration of the Act. For instance, the court below may construe that, unless a person is employed exclusively and strictly in an administrative, executive, professional or supervisory capacity, his acceptance into membership of the labor organization would not constitute an offense. We submit that the words used by the Legislature have a well understood meaning.

"Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense; common law words according to their sense in the common law; and technical words pertaining to any science, art or trade, in a technical sense." *Mobile Dry Docks Co. v. The City of Mobile*, 146 Ala. 198, 208, 40 So. 205.

The uncertainty, if any, is one of degree, and a court, in the enforcement of this provision in a specific instance, would be required to apply a strict construction of such provision, and it does not appear from the record that this would result in establishing such uncertainty as to constitute a violation of due process of law. Counsel for petitioners erroneously assume that the enforcement of these provisions would be against the employee or member of the labor organization, whereas the regulation is only imposed upon the organization and only enforceable against it (See Section 18 of the Bradford Act).

The case of *Lanzetta v. State of New Jersey*, 306 U. S. 451, cited by petitioners, is clearly distinguishable. The terms there under consideration were not sufficient to inform a defendant of the alleged offense.

The case of *United States v. Reese*, 92 U. S. 214, cited by petitioners, involved an act of Congress

which was not shown to be limited to the enforcement of constitutional powers delegated to the Federal Government, in addition to uncertainties in the language used. This case may be clearly distinguished from any question which might be interposed with respect to the validity of Section 16 of the Bradford Act.

The case of *United States v. Cohen Grocery Co.*, 255 U. S. 81, cited by petitioners, involved a construction of an act of Congress making it unlawful for any person "to make any unjust or unreasonable rate of charge in handling or dealing in or with any necessaries * * *", which statute was held to be so obviously vague and uncertain as to be contrary to the due process clause in the Fifth Amendment to the Constitution of the United States.

The cases cited by petitioners do not support their contentions with respect to any invalidity by reason of uncertainty or ambiguity in the description of the offense created by either Section 15 or Section 16 of the Bradford Act.

CONCLUSION

For the reasons herein discussed, it does not appear that there is a case or controversy presented within the power and jurisdiction of this Court under Article III, Section 2 of the Constitution, in which it is necessary for this Court to determine a constitutional question with respect to either Sections 7, 15 or 16 of the Bradford Act. However, if a case or controversy is determined to be presented to this Court, we submit that the petitioners have failed to discharge the burden of showing any constitutional invalidity; and in the light of such facts and circumstances as are presented in the record, the legislation in its several aspects is shown to be a reasonable exercise of the police power, and therefore valid. For these reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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